

FEB 13 1996

STATE OF ARIZONA
DEPARTMENT OF INSURANCEDEPARTMENT OF INSURANCE
By DLA

In the Matter of) Docket No. 95A-248-INS
GEORGE K. LOMAX,)
Applicant.) ORDER

On February 7, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed these recommendations, and enters the following order:

1. Finding of Fact number 6 found on page 2, line 5 is modified to read:

"On November 20, 1995, Mr. Lomax timely filed with the Department a demand for hearing concerning this matter."

2. The remainder of the Recommended Findings of Fact and Conclusions of Law are adopted.

3. The application for an individual life and disability insurance agent license submitted on July 17, 1995 by George K. Lomax to the Arizona Department of Insurance is denied.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to

1 A.A.C. R20-6-114(B).

2 The final decision of the Director may be appealed to
3 the Superior Court of Maricopa County for judicial review
4 pursuant to A.R.S. §20-166.

5
6 DATED this 12th day of February, 1996.

7
8 
9 CHRIS HERSTAM
Director of Insurance

10 COPY of the foregoing mailed/delivered
11 this 13th day of February, 1996 to:

12 Charles R. Cohen, Deputy Director
13 Gregory Y. Harris, Executive Assistant Director
14 John Gagne, Assistant Director
15 Maureen Catalioto, Supervisor
16 Department of Insurance
17 2910 N. 44th St., Suite 210
18 Phoenix, Arizona 85018

19 Kathryn Leonard
20 Assistant Attorney General
21 1275 West Washington
22 Phoenix, AZ 85007

23 George K. Lomax
24 3146 W. Pershing Ave.
25 Phoenix, AZ 85029

26 Family Service Life Insurance Company
27 P.O. Box 219018
28 Dallas, TX 75221



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

FEB 7 1996

Office of Administrative Hearings
DEPARTMENT OF INSURANCE
By CC

In the Matter of

No. 95A-248-INS

GEORGE K. LOMAX,

**RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

Applicant.

On January 25, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General Kathryn Leonard appeared on behalf of the Arizona Department of Insurance ("Department"). Applicant George K. Lomax ("Mr. Lomax") appeared on his own behalf.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Recommended Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. On July 27, 1995, Mr. Lomax submitted an application for an individual life and disability insurance agent license (the "1995 Application") to the Department. Mr. Lomax was issued a conditional license in connection with 1995 Application upon Mr. Lomax's execution of an Agreement for Conditional License.

2. Mr. Lomax answered "No" to Question F(1) of the 1995 Application which asks, "Have you EVER been convicted of a misdemeanor?"

3. Mr. Lomax answered "No" to Question F(3) of the 1995 Application which asks, "Have you EVER been arrested, questioned, served a criminal summons, taken into custody, charged with, tried for, or ever been the subject of an investigation concerning the violation of any felony or misdemeanor, or are any charges now pending against you?"

4. On October 2, 1992, Mr. Lomax pled guilty to Assault in violation of A.R.S. §13-1203(A)(3), a class 3 misdemeanor, in State of Arizona v. George K. Lomax, City of Phoenix Municipal Court Complaint No. 87734880C ("Complaint No. 87734880C"). The Assault charge originated as a result of a domestic disturbance involving Mr. Lomax and his wife at that time, Robin Smith. The City of Phoenix Municipal Court placed Mr. Lomax on probation for one year.

1 5. On November 15, 1995, the Department revoked the conditional
2 license issued to Mr. Lomax and denied the 1995 Application based upon Mr.
3 Lomax's material misrepresentation of his criminal background on the 1995
4 Application.

5 6. On November 20, 1996, Mr. Lomax timely filed with the Department a
6 demand for hearing concerning this matter.

7 7. The Department alleged in the Notice of Hearing that Mr. Lomax's
8 failure to disclose in the 1995 Application the above-mentioned Assault charge,
9 conviction, arrest and custody in connection thereto and failure to disclose a 1988
10 Destruction of Property charge constitutes material misrepresentation of his criminal
11 background to the Department.

12 8. The Notice of Hearing alleged that Mr. Lomax was arrested by the
13 Rockville, Colorado Police Department on or about March 16, 1988 and charged
14 with Destruction of Property. Mr. Lomax credibly testified that in checking on his
15 criminal background, Mr. Lomax learned that he had been charged with Destruction
16 of Property in 1988 by the Montgomery County Police Department of the State of
17 Maryland.

18 9. Mr. Lomax credibly testified that at the time he completed the 1995
19 Application he did not know of the 1988 Destruction of Property charge filed against
20 him in Montgomery County, Maryland. Mr. Lomax learned of that charge as a result
21 of communication he received from the Department and further investigation by him
22 as to his criminal background.

23 10. A computer printout from the District Court of Maryland (Exhibit C)
24 shows that there was a trial on the Destruction of Property charge and that all
25 charges were disposed of. Other than the above-mentioned evidence relating to
26 that charge, the General Waiver and Release (Exhibit B, first page) that Mr. Lomax
27 filed in the District Court of Maryland for Montgomery County, and Mr. Lomax's
28 credible testimony that he was charged with Destruction of Property and has filed a
29 Petition for Expungement of the records relating to that charge (Exhibit B, second
30 document), there was no additional evidence presented by the parties on this
31 matter.

32 11. Mr. Lomax submitted into evidence a letter dated January 23, 1996
33 from Peg Kinney-Sparling as a character reference. In her letter, Ms. Sparling
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1 states that she has known Mr. Lomax for 23 years and that he is "an ethical and
2 morally upright person."

3 12. Mr. Lomax submitted into evidence a letter dated January 19, 1996
4 from Robin Smith, Mr. Lomax's ex-wife, as a character reference. In her letter, Ms.
5 Smith recounts background information as to the domestic violence situation which
6 involved Ms. Smith and Mr. Lomax. Ms. Smith's letter does not provide information
7 as to Mr. Lomax's character.

8 13. Mr. Lomax submitted into evidence a letter dated January 23, 1996
9 from Edward Steklenski, the sales manager of Greenwood Memory Lawn Cemetery
10 ("Greenwood"). In his letter, Mr. Steklenski states that Mr. Lomax has represented
11 himself in "an honest and professional manner" and been an asset to Greenwood.

12 14. The above-mentioned letters of character were not sworn statements
13 and the individuals who wrote those letters did not appear at the hearing and were
14 not subject to cross-examination by Department's counsel or examination by the
15 Administrative Law Judge. None of those letters address Mr. Lomax's failure to
16 disclose the Assault conviction in the 1995 Application. Mr. Steklenski's letter and
17 Ms. Sparling's letter do not indicate whether they are aware of Mr. Lomax's criminal
18 background. Under the circumstances, the three letters of character reference
19 (Exhibits D, E and F) were given little consideration.

20 15. Janice Wilkins, a friend of Mr. Lomax, testified as a character witness
21 on behalf of Mr. Lomax. Ms. Wilkins testified that she has known Mr. Lomax all of
22 his life and has never known him to do a dishonest act. Ms. Wilkins further testified
23 that Mr. Lomax is an outstanding parent of two children, interested in serving the
24 community, and is a caring upright citizen of Arizona. On cross-examination, Ms.
25 Wilkins testified that she was unaware that Mr. Lomax had been convicted of a
26 misdemeanor for Assault until Mr. Lomax shared that information with her
27 subsequent to the submission of the 1995 Application to the Department. Ms.
28 Wilkins' testimony was given little consideration due to her close relationship with
29 Mr. Lomax and personal bias in favor of Mr. Lomax.

30 16. Gordon Proctor, the natural father of Mr. Lomax, testified as a
31 character witness for Mr. Lomax. Mr. Proctor reiterated the testimony given by Ms.
32 Wilkins as to Mr. Lomax's character. Mr. Proctor testified that he raised Mr. Lomax
33 until Mr. Lomax was seven years old and was reunited with his son approximately
34 four months ago. Mr. Proctor's personal knowledge of Mr. Lomax's character has

1 been for just the past four months. In light of that short duration of time of
2 acquaintance, the close relationship with Mr. Lomax and personal bias in favor of
3 Mr. Lomax, Mr. Proctor's testimony was given little consideration.

4 17. Mr. Lomax testified that he did not disclose the Assault charge in the
5 1995 Application because he was not aware that the Assault charge in complaint
6 No. 87734880C was part of his permanent record. Mr. Lomax claimed his
7 "ignorance to the law" as well as his state of mind at the time of that proceeding,
8 due to stress because of the deterioration of his long-term relationship with Robin
9 Smith, is the reason why he answered "No" to Questions F(1) and F(3) of the 1995
10 Application. Mr. Lomax's testimony explaining why he answered Questions F(1)
11 and F(3) in the manner in which he did is not credible.

12 18. Mr. Lomax testified that he had been charged with Assault and pled
13 guilty to Assault but did not recall whether he was questioned by police. In an
14 October 18, 1995 letter Mr. Lomax directed to Maureen Catalioto, Licensing Section
15 Supervisor of the Department, Mr. Lomax stated that at the scene of the domestic
16 dispute he volunteered to be "taken" and admitted his guilt. Mr. Lomax's testimony
17 corroborated that at the scene of the domestic dispute, Mr. Lomax voluntarily left
18 with the police officer who arrived at the scene. This evidence and Mr. Lomax's
19 Plea Agreement in Complaint No. 87734880C contradict Mr. Lomax's assertion of
20 lack of knowledge as to a permanent record which he claimed was the reason why
21 he answered "No" to Questions F(1) and F(3) of the 1995 Application.

22 CONCLUSIONS OF LAW

23 1. Mr. Lomax received notice of this proceeding as prescribed by A.R.S.
24 §§20-163 and 41-1061.

25 2. The Director has jurisdiction over this matter pursuant to A.R.S.
26 §§20-161 and 20-290.

27 3. The Director may refuse to issue Mr. Lomax an insurance license if,
28 after hearing, the Director finds that Mr. Lomax's above-mentioned conduct
29 constitutes a material misrepresentation or fraud in the application for, or attempt to
30 obtain, any insurance license pursuant to A.R.S. §§20-290(B)(1).

31 4. Mr. Lomax did establish by a preponderance of the evidence that his
32 failure to answer Questions F(1) and F(3) of the 1995 Application with respect to the
33 1988 Destruction of Property charge does not constitute a material misrepresenta-
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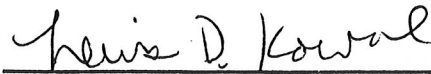
1 tion or fraud in the application for, or attempt to obtain any insurance license within
2 the meaning of A.R.S. §20-290(B)(1).

3 5. Mr. Lomax's conduct as described above in the Findings of Fact
4 constitutes a material misrepresentation in the application for, or attempt to obtain
5 any insurance license within the meaning of A.R.S. §20-290(B)(1).

6 **RECOMMENDED ORDER**

7 The undersigned Administrative Law Judge recommends that the application
8 for an individual life and disability insurance agent license submitted on July 17,
9 1995 by Applicant George K. Lomax to the Arizona Department of Insurance be
10 denied.

11 DATED this 7th day of February, 1996.

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14 
15 LEWIS D. KOWAL
16 Administrative Law Judge
17

18 COPY of the foregoing mailed/delivered
19 this 7th day of February, 1996, to:

20 Chris Herstam, Director
21 Arizona Department of Insurance
22 2910 North 44th Street, Suite 210
23 Phoenix, AZ 85018

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26 Chris Crawford
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